

Editorial

Much has been said about the dearth of Kenyan legal scholarship available today. While the reasons for this are varied and debatable, what remains clear is that rather than lament about it, the only way to cure the deficit is simply to research and write. Ours is a humble yet deliberate offering in this respect. The Strathmore Law Review is a student-run publication, exclusively publishing pieces by undergraduate and recently-graduated students of law. We believe that though they may be the youngest members of the profession, the academic research and insights of students can significantly contribute to the positive growth and development of society through law.

Inside this volume is a collection of a high quality variety of scholarship. In *'Implementation Remains the Achilles Heel of the African Union: A Study of the African Peer Review Mechanism'*, author Imani Jaoko looks into the chronic inability of the African Union to implement its programs and policies and how this inability continues to limit the effectiveness and power of the body. Using the African Peer Review Mechanism (APRM) as an example, the article attempts to illustrate that, without implementation, the AU's policy documents will remain statements of intention without any hope of actual realisation.

Claude Mwangi, in *'Transitional Justice as Path to Distributive Justice: A Jurisprudential and Legal Case for Land Restitution in Kenya'*, makes an effort to situate the land question in Kenya within the abstract social contract that is the Rawlsian hypothetical—justice as fairness. Accordingly, the author draws upon transitional justice as a useful avenue to bring the land question to a closer approximation of the Rawlsian ideal.

Cecil Yongo's *'Public Pressure, Temptation of Power and Unconstitutional Actions in the War Against Terrorism in Kenya: Suggesting a Link'*, tries to look into what it is that leads to those in power deciding to employ unconstitutional actions in attempting to stem terrorist attacks in Kenya, and what such decisions lead to with regard to human rights and the rule of law.

'The Justiciability of the Right to Development in Ghana: Mirage or Possibility?' is a study by Asare Larbi Paa Kwame, that seeks— adopting the Black Letter Law approach in analysing the legal effect of relevant law—to determine whether, at

national level in Ghana, the right to development is a right which is opposable by right holders against the duty bearers.

In *'Analysing the Future of International Criminal Justice in Africa: A Focus on the ICC'*, Emily Wakesho Ngolo avers that the relationship between the African continent and the International Criminal Court can be best described as antagonistic. She says that there exist a myriad of challenges that have threatened to cripple the workings of the Court, and her essay seeks to show the interplay of the role of states and politics in international criminal justice in relation to the continent, to study the challenges the ICC has faced especially in regard to the cooperation of states and ultimately to assess the extent of the truth in the assertion that the working of the court may be coming to a premature end.

This volume of the Strathmore Law Review also has inside it Melissa Mungai's *'Fragmentation in a Bid to Defragment: Decentralisation as a Solution to the Challenge of Inclusion in the Kenyan Context'*, an essay that attempts to propose decentralisation as a possible solution to the challenge of inclusion in Kenyan society. It expounds on how decentralised systems of governance can enhance inclusiveness in the social, economic and political spheres in which inclusion is looked at.

This publication also contains *'Terrorism as a form of Imperialism: A Case for the Rule of Law'*, an essay in which Brian Kimari introduces us to a view of terrorism as a form of imperialism and, following this, attempts to show that, just like other forms of imperialism, battling it does not require any actions outside the realm of rule of law.

Lisa Owino attempts to track how African Customary Law lost its lustre and how the Constitution of Kenya 2010 gives it a new lease of life in her essay, *'African Customary Law: Tracing its Degradation and Analysing the Challenges it Confronts.'* She then completes her analysis by delving into the challenges that African Customary Law faces in its application, given the renewed pre-eminence it has enjoyed as a way of alternative dispute resolution.

Through a review of the interface between indigenous knowledge systems and the intellectual property law regime, Wanjiku Karanja—in *'The Legitimacy of Indigenous Intellectual Property Rights' Claims'*—tries to delve into the limitations that conventional intellectual property rights systems face in providing adequate recognition and protection for indigenous intellectual property rights. She attempts to show that the establishment of a sui generis system of protection offers a plausible solution to the inadequacy of existing regimes of protection.

Finally, in ‘*A Perspective on the Doctrine of Separation of Powers Based on the Response to Court Orders in Kenya*’, Emanuel Kibet and Kimberly Wangeci explore scholarship and judicial decisions in a bid to establish the ambits of the doctrine of separation of powers, with a specific focus on the level or respect that has been accorded to court orders in Kenya.

As the volume of legal scholarship continues to grow at an encouraging rate, we are hopeful that the Strathmore Law Review will be counted amongst the finest legal literature. We are also hopeful that the voices of young scholars will continue to be heard and considered and that this is only the beginning of the development of a vibrant culture of writing that will expand the scope of discussion and debate of issues in the profession and make it richer. It is our hope that The Strathmore Law Review will herald increased and improved quality of research and writing that will in turn better the law and thus, society.

Cecil Yongo, *Editor-in-Chief*

Imani Jaoko, *Managing Editor*